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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/757,244 | 01/14/2004 | Heino Wendelrup | 34650-00249USC1 | 4358 |
| 23932 | 7590 | 07/01/2004 | EXAMINER | |
| JENKENS & GILCHRIST, PC 1445 ROSS AVENUE SUITE 3200 DALLAS, TX 75202 | | | GOINS, DAVETTA WOODS | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2632 | |

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,244

Applicant(s)

WENDEL RUP ET AL.

Examiner

Davetta W. Goins

Art Unit

2632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 28-32 and 34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

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Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 28, 29, 31, and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Miyakawa et al. (US Pat. 5,912,544).

In reference to claim In reference to claims 28, 31, Miyakawa discloses the claimed resistor having a resistance value, a processor configured to calculate a resistance in the battery responsive to the resistance value and a voltage drop across the impedance unit, and circuitry for enabling communication between the processor and the battery, which is met by microcomputer 6 carrying out the indication of the remaining power of the battery 10 which is integrated into the radio apparatus 1. In the case of the lithium ion series battery, the threshold voltage in the transmission mode is set to a level lower than the threshold voltage in the reception mode by the voltage drop. In addition, in the case of the Ni-Cd series battery, since the change in the internal impedance due to temperature is less, the warning voltage is corrected only in the transmission mode and the reception mode (col.14 lines 21-67 and col. 15 lines 1-18).

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In reference to claims 29, 32, Miyakawa discloses the claimed transceiver for transmitting and receiving serial communication of data between the electronic device and the communications circuitry of the battery, a first register for holding data to be transmitted by the transceiver, and a second register for holding data received by the transceiver, which is met by microcomputer 6 including a method of judging the current operation mode of the transmission/reception unit 2 in the case of the simplex transceiver (col. 13 lines 35-67).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 30 and 34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 34 and 35 of U.S. Patent Application 09/238,007. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the switching of a current source with the switching of a resistor as a choice of design within a circuit as a means for monitoring different components within the

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Art Unit: 2632

battery to help determine specific data that is useful in identifying the battery and determining it's remaining capacity.

5. The prior art of record and not relied upon is considered pertinent to the applicant's disclosure as follows. Rossi (US Pat. 5,587,924), Brost et al. (US Pat. 5,739,670), and Kurle et al. (US Pat. 6,137,261), which include battery monitoring devices.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davetta W. Goins whose telephone number is 703-306-2761. The examiner can normally be reached on Mon-Fri with every other Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on 703-308-6730. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2632

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DAVETTA W. GOINS
PRIMARY EXAMINER



D.W.G.
June 24, 2004

Davetta W. Goins
Primary Examiner
Art Unit 2632

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